

### **REMARKS**

The following remarks are submitted to address the above amendments and issues raised in the Official Action mailed February 10, 2005.

Claims 1-30 are pending in this application. Claims 11-15 and 26-30 stand allowed. Claims 1-10 and 16-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art in view of U.S. Patent No. 3,182,917 to Tamny et al.

These amendments are made merely to clarify the subject matter of this application. No new matter has been added. Support for requested amendments can be found in the original claims and throughout the present specification and drawings. Applicant respectfully requests consideration of the application in light of the above amendments and the following remarks.

### **Interview Summary**

Applicant thanks Examiner Rosenbaum for a telephone interview with the undersigned conducted on March 2, 2005. The interview included a discussion of all independent claims. It was agreed that independent claims 1 and 16 would be allowable if amended to the effect that the first elongated structure is “movable radially towards an opening of the infeed chute,” as in allowed independent claims 11 and 26.

### **Claims 11-15 and 26-30 – Allowed**

Claims 11-15 and 26-30 are allowed.

### **Claims 1-10 and 16-25 — 35 USC § 103(a)**

The rejections of claims 1-10 and 16-25 under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art in view of U.S. Patent No. 3,182,917 to Tamny et al. are respectfully traversed.

The Official Action states that Applicant's arguments filed January 21, 2003, concerning the above rejection are not commensurate in scope with the claimed subject matter and are not considered to be persuasive. (Official Action, page 2.)

Claims 1, as amended herein, claims "[a] wood chipper safety device, comprising: a first elongated structure positioned outside of and adjacent to a top of an infeed chute of a wood chipper, wherein *the first elongated structure is movable radially towards an opening of the infeed chute* between a plurality of positions; and an actuator operably connected to the first elongated structure, the actuator having a plurality of operable positions corresponding to the plurality of positions of the first elongated structure." (Claim 1, emphasis added.)

Claim 16, as amended herein, claims "[a] waste reducing device having a powered feed system, a powered cutting system, and an infeed chute, the waste reducing device comprising: a first elongated structure positioned outside of and adjacent to a top of the infeed chute, wherein *the first elongated structure is movable radially towards an opening of the infeed chute* between a plurality of positions; and an actuator operably connected to the first elongated structure, the actuator having a plurality of operable positions corresponding to the plurality of positions of the first elongated structure." (Claim 16, emphasis added.)

Tamny et al. discloses a brush chipper safety control having a cutout means in an electrical coil circuit operable to de-energize a drive motor engine, a brake system operable to arrest rotation of a rotor, a spring means, a means for manually stressing the spring means, a means for releasably retaining the spring means in stressed condition, means for manually

actuating the retaining means to release the spring means from stressed condition, and a means for transmitting the energy of the spring release to the cutout means. (Tamny et al., claim 1.) The means for manually actuating the safety control retaining means to release the spring means from stressed condition includes (1) arms 35 and plates 37 at the *sides* 24 of the chute and (2) a supplemental safety actuator 39 comprising bar 43 depending *below* the chute. (Tamny et al., col. 3, lines 44-46; col. 2, lines 42-57; Figs. 1-5 (emphasis added).) The safety control is actuated by pressing either plates 37 or bar 43 in the same direction as the direction of brush feed [i.e., horizontally and/or away from the opening of the infeed chute]. (Tamny et al., col. 2, lines 63-66; Figs. 2 and 3.) Bar 43 is positioned below the chute at a location of direct accessibility by the operator's legs, thus affording a control independent of hand or arm actuation. (Tamny et al., col. 2, lines 49-57.)

Nowhere does Tamny et al. disclose an elongated structure positioned adjacent to the top of an infeed chute that is movable *radially towards the opening of the infeed chute*, as in claims 1 and 16 of the present invention. Moreover, nowhere does Tamny et al. disclose an elongated structure positioned adjacent to the *top* of an infeed chute as in claims 1 and 16. Instead, Tamny et al. discloses the means for actuating a safety control as the arms and plates at the *sides* of the chute and the bar depending *below* the chute. Accordingly, Tamny et al. discloses actuating the safety control by pressing either plates 37 or bar 43 in the same direction as the direction of brush feed, i.e., horizontally and/or away from the opening of the infeed chute, and not *radially towards the opening of the infeed chute*, as in claims 1 and 16. Therefore, Applicant respectfully submits that Tamny et al. does not teach or suggest all the limitations of claims 1 and 16 of the present invention and consequently is deficient as a reference.

Tawny et al. teaches that bar 43 is positioned below the chute at a location for direct accessibility by the operator's legs. As such, Tawny et al. teaches away from a top-positioned safety device as in claims 1 and 16 of the present invention. Tamny et al. teaches actuating the safety control by moving the plates 37 or bar 43 in the same horizontal direction as the direction of brush feed, and not advantageously *radially towards the opening of the infeed chute*, as would be the natural reaction of an operator attempting to leverage herself against the first elongated structure to pull herself out of the infeed chute as in the claims 1 and 16 of the present invention. (See, Specification, page 5, lines 13-19.) Additionally, the teaching in Tawny et al. to position a safety device actuator in an unstable, spring-stressed position to be operable teaches away from the simple, one-step, lever-actuated safety device as in the present invention, providing a safety advantage not taught or suggested by Tawny et al. (Tawny et al., col. 1, lines 44-54.) Thus, Applicant respectfully submits that there is no suggestion or motivation in either the admitted prior art or Tamny et al., and therefore it would not have been obvious to one of ordinary skill in the art at the time the invention was made, to modify or combine the respective teachings of these references, to achieve the present invention as in claims 1 and 16. Applicant respectfully submits that neither would there be any reasonable expectation of success to one of ordinary skill in the art to combine the teachings of these references.

Applicant respectfully submits that the combination of an elongated structure positioned adjacent to the *top* of an infeed chute and that is movable *radially towards the opening of the infeed chute*, as in claims 1 and 16 of the present invention, is not obvious, as discussed herein. Therefore, Applicant respectfully submits that the combination of features as claimed in claims 1 and 16 are allowable over the art of record.

Claims 2-10 depend from claim 1, and claims 17-25 depend from claim 16. Accordingly, claims 2-10 and 17-25 are likewise not obvious over the admitted prior art in view of Tamny et al. Moreover, claims 6-10 and 21-25 claim a second elongated structure movable in the *opposite* direction of the feed direction (emphasis added). Applicant respectfully submits that having to push a safety device actuator in the horizontal feed direction would make self-rescuing efforts of an operator more difficult or ineffective.

For all of these reasons, the Office is respectfully requested to withdraw the rejections of claims 1-10 and 16-25 under 35 USC §103 (a).

### Conclusion

Applicant submits that a full and complete response has been made herein to the Official Action and, as such, all pending claims in this application are now in condition for allowance. Therefore, Applicant respectfully requests early consideration of the present application, entry of all amendments herein requested, withdrawal of all rejections, and allowance of all pending claims.

The Office is respectfully invited to contact J. Michael Boggs at (336) 747-7536, to discuss any matter relating to this application.

Respectfully submitted,

4/15/05  
Date

Kilpatrick Stockton LLP  
1001 West Fourth Street  
Winston-Salem, NC 27101  
(336) 747-7536  
(336) 734-2632 (facsimile)

J. Michael Boggs  
J. Michael Boggs  
Reg. No. 46,563